IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9154 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGRAJSINH BHARATSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR MR PRAJAPATI for MR SANJAY M AMIN for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 10.04.2003 passed by the Police Commissioner, Rajkot City, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 10.4.2003.

2. The grounds of detention served upon the petitioner and as placed on record reveal that the detaining authority took into consideration four offences registered against the petitioner under Sections 379 and 114 of the IPC on 27.12.2002, 15.1.2003, 9.2.2003 and on 22.3.2003 for the theft of two wheeler vehicles. All the four cases are pending before the competent court. In addition to this, the detaining authority also took into consideration two in-camera statements of the witnesses as recorded by the sponsoring authority on 07.4.2003 and verified by the detaining authority on 8.4.2003 revealing the incidents occurred on 5.2.2003 and 15.12.2002 which are unreported to the police. From the above material, the order impugned came to be passed by the detaining authority.

3. Learned Advocate Mr. MR Prajapati for Mr. Sanjay M. Amin for the petitioner and learned AGP Mr. R.M.Chauhan were heard at length. The affidavit-in-reply is filed by the detaining authority and as placed on record is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, from rival contentions, it appears that the matter can be disposed of on the sole ground whether there was any material before the detaining authority to reach to the subjective satisfaction that the objectionable activities of the petitioner was so as to prejudice the public order. For this, the detaining authority relied upon the crimes registered against the petitioner and those four offence under Sections 379 and 114 of the IPC registered against the petitioner are pending before the court. Mere registration of offence against the petitioner could hardly be said to be the objectionable activities affecting the public order. The detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority, as aforesaid. While going through the statements, it clearly transpires that those unreported incidents of individual quarrel picked up by the petitioner, can hardly be said to be affecting the public order. The incident occurred on 15.12.2002, as

narrated by the witness, the petitioner and his associates approached at the business place of the witness and they took their lunch at the establishment of the witness. They did not pay anything to the witness and when witness demanded money for the food taken by the petitioner and his associates, the witness was beaten, while the incident occurred on 5.2.2003, according to witness, the petitioner and his associates, approached at the motor garage of the witness on one motor cycle and directed the witness for servicing of the motor cycle and for the removal of the number plate. The witness was suspicion as to the motor cycle being stolen and therefore he refused. Ultimately, on refusal, the witness was beaten by the petitioner and his associates. Therefore, the totality of circumstances, it clearly appears that the aforesaid two incidents with allegations be taken on their face value, as they are, it is difficult to comprehend that they were the incidents involving public order. They were the incidents directed against single individual, having no adverse effects prejudicial to the maintenance of public order or even disturb the tempo of life or peace and tranquility of the locality. Therefore, there was no material before the detaining authority to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to the maintenance of the public order. The order impugned therefore is required to be set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Rajkot City, on 10.04.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair